

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, February 22, 2006, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** James Ward, Chairman  
Robert Bartholomew  
Paul Schultz  
Walter Tarmann  
Ray Dwyer

**BOARD MEMBERS ABSENT:** Walter Schmidt

**SECRETARY TO THE BOARD:** Peggy Pelikan

**OTHERS PRESENT:** Mary Finet, Senior Land Use Specialist  
William & Katherine Boritzke, BA06:008, petitioners  
Duane & Sue Berghauer, BA06:006, petitioners  
George & Patricia Snyder, BA06:005, petitioners  
Steve Ware, BA06:009, petitioner  
Carol & Jean Arenz, BA06:006, neighbors  
Jim & Kay Kline, BA06:006, neighbors  
Mary Burt, BA06:006, neighbor  
Ken Downey, BA06:006, neighbor  
Terry & Elizabeth Dow, BA05:065, petitioners

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Tarmann *I make a motion to approve the Summary of the Meeting of February 8, 2006, with the following modifications:*

*Mary Finet was in attendance at the meeting and her name should be added to "Others Present."*

*The motion made by Mr. Ward in BA06:001 shall be modified to read as follows: "I make a motion to approve the floor area ratio and open space variances and deny the offset variance with the conditions and reasons as stated in the staff report..."*

*In BA06:001, the reasons for the decision of the Board shall be added to the motion made by Mr. Ward and the reasons in the Staff Recommendation portion of the minutes shall remain as stated in the Report.*

The motion was seconded by Mr. Dwyer and carried unanimously.

**NEW BUSINESS:**

**BA06:002 FREDERICK P. MANSKE**

**Larry Babb - Petitioner**

Mr. Bartholomew *I make a motion to hold this hearing in abeyance until March 22, 2006, conditioned upon the petitioner agreeing to hold the hearing in abeyance, in order to allow the petitioner the opportunity to submit the additional information required at the February 8, 2006, hearing.*

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was to hold the hearing in abeyance until March 8, 2006.

The reasons for the recommendation, as stated in the Staff Memorandum, are as follows:

On February 9, 2006, the Waukesha County Board of Adjustment held this hearing in abeyance until February 22, 2006 so the petitioners could submit further information regarding the correct legal description of the above-referenced property. No information has been submitted; therefore, Waukesha County staff recommends that the hearing be held in abeyance again until March 8, 2006.

**BA06:005 GEORGE & PATRICIA SNYDER**

Mr. Bartholomew *I make a motion to approve the request in accordance with the staff's recommendation, as stated in the Staff Report, with the following modifications to the conditions:*

*Condition No. 2 and Condition No. 4 shall be deleted.*

The motion was seconded by Mr. Ward and failed with three no votes. Mr. Bartholomew and Mr. Ward voted yes. A discussion ensued and the following motion was made.

Mr. Dwyer *I make a motion to approve the request in accordance with the staff's recommendation, for the reasons stated in the Staff Report, and with the conditions recommended in the Staff Report.*

The motion was seconded by Mr. Schultz and passed with three yes votes. Mr. Tarmann and Mr. Ward voted no.

The staff's recommendation was for conditional approval, with the following conditions:

1. The total floor area ratio on the property shall not exceed 16.3% (based on the total lot size of 15,339 sq. ft.). This will allow an addition approximately 20 ft. by 26.2 ft. in size. It should be noted that if the additional right-of-way is vacated and added to the lot size as noted above in the staff analysis, this would result in a total floor area ratio of 14.5%.
2. The garage addition shall be constructed on the south side of the garage towards Mapleton St.
3. The garage addition must be located at least 20 ft. from the road right-of-way of Mapleton St., as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the setback requirements.
4. The garage addition shall be no closer to the east property line than the existing garage.

5. The garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured from the lowest exposed point to the peak of the roof, must not exceed 18 ft.
6. Prior to the issuance of a zoning permit, a complete set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
7. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed garage addition, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
8. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed garage addition does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of the request for variances from the floor area ratio, open space, offset, and road setback requirements as well as a special exception from the accessory building floor area ratio requirements of the Ordinance, as conditioned, will allow the petitioner to construct an approximately 524 sq. ft. addition to the detached garage while minimizing the impact on the neighboring properties and the road. Due to the location of the septic system and the well on the property and the fact that the property is bounded on three sides by public roads, the area on the property that can be built on is extremely limited. The residence itself does not meet the minimum first floor area required; therefore, it is reasonable to allow the detached garage to be increased in size. Furthermore, as stated in the staff analysis, if the Town reduces the width of the right-of-way of Mapleton St. and if the additional right-of-way on the west side of the property that is not improved and is maintained by the subject property owner, are added to the total square footage of the property, the proposed garage addition would not exceed the total floor area ratio requirement of the Ordinance.

If the garage addition is constructed on the south side of the garage, as recommended, it will allow the addition to be constructed no closer to the east property line than the existing garage and will keep the structure the maximum distance from the more highly traveled C.T.H. "CW," see attached Exhibit "B." The size of the property is less than the open space requirement in the R-2 zoning district and no structure could be constructed on the property without the need for an open space variance. Therefore, the approval of this request would be in conformance with the purpose and intent of the Ordinance.

**BA06:006 DUANE & SUZANNE BERGHAUER**

Mr. Tarmann

*I make a motion to approve the request in accordance with the staff's recommendation, as stated in the Staff Report, with the conditions recommended in the Staff Report.*

The motion was seconded by Mr. Dwyer and passed with three yes votes. Mr. Bartholomew and Mr. Ward voted no.

The staff's recommendation was for approval, with the following conditions:

1. The proposed residence and attached garage must be located at least 40 ft. from the 100-year floodplain and 42 ft. from the shoreline of Okauchee Lake as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the setback requirements.
2. The proposed residence and attached garage must be located at least 6 ft. from both property lines as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset requirements. The residence, if constructed 6 ft. from the property lines, will be within 10 ft. of the residence on the adjacent property to the west. Therefore all applicable building codes relating to fire safety must be complied with.
3. Any proposed decks and/or patios must be located a minimum of 5 ft. from the property lines, 30.5 ft. from the 100-year floodplain, and 32.5 ft. from the shoreline.
4. The footprint of the residence and attached garage shall not exceed 1,300 sq. ft. The attached garage shall be a minimum of 400 sq. ft. in size and the first floor of the residence shall be a minimum of 850 sq. ft. in size. The proposed residence must be reduced in size so that the total floor area, including the first and second floors (not including the basement level), attached garage, any covered decks, covered patios, and/or covered porches, and the attached garage do not exceed 1,850 sq. ft. This will result in a floor area ratio of approximately 24.2%.
5. Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
6. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed residence, attached garage and deck, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
7. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 6.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request as recommended will allow the construction of new reasonably sized single-family residence on the subject property in scale with the small size of the lot. The minimum

relief allowed from the offset requirement of the Ordinance will allow a residence to be constructed that, at its narrowest point, is approximately 20 ft. wide and at its widest point is approximately 32 ft. wide. Without the variance from the offset requirement, the width of the structure would be limited to 16 ft. The proposed residence, based on the recommended conditions, will have to be reduced in size; therefore, the structure could be constructed further north on the property to allow for a wider residence/attached garage while maintaining the 6 ft. offset.

Due to the size of the lot, no structure could be constructed on the property without the need for some variances. It should be noted that Parcel 2, as shown on the survey, allows access to Road I to the subject property as well as the two properties to the east. The parcel is 2,370.5 sq. ft. in size, one third of this parcel, although not legally combined with the subject parcel, increases the total amount of open space in the area. The total recommended square footage of the residence limited to 1,850 sq. ft. will minimize the footprint of the structure while allowing a size residence that is in keeping with the character of the surrounding properties. It should be noted that the staff has recommended that the footprint be slightly larger than the minimum first floor required to allow a minimal amount of design flexibility. The approval of this request, with the recommended conditions, will allow the owner to use the property for a permitted purpose, will permit the construction of a residence and attached garage that will be appropriately sized for the lot, and will not be detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, as recommended, is in conformance with the purpose and intent of the Ordinance.

**BA06:008 WILLIAM & KATHERINE BORITZKE**

Mr. Dwyer

*I make a motion to approve the request in accordance with the staff's recommendation, as stated in the Staff Report, with the conditions recommended in the Staff Report.*

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. A firewall shall be installed in the detached garage and/or proposed addition per all applicable building codes.
2. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed addition does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request with the recommended conditions will allow the petitioners to construct an addition to the existing residence on the property. The only reason that the existing residence and detached garage are non-conforming is because they are less than the required 10 ft. from each other. Both structures meet all other required offset and setback requirements of the Ordinance. Furthermore,

the addition will be on the north side of the residence, away from the lake, and will be in an area that has been previously disturbed. No additional disturbance within the Environmental Corridor is proposed. Therefore, the approval of this request, with the recommended conditions, would be in conformance with the purpose and intent of the Ordinance.

**BA06:009 STEVE WARE**  
**Bill & Stacy Ryan – Owners**

Mr. Schultz

*I make a motion to approve the request in accordance with the staff's recommendation, as stated in the Staff Report, with the conditions recommended in the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. A detailed cost estimate of **all** proposed remodeling must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request will allow the petitioner to do interior remodeling to the existing single-family residence on the property. The residence is a substantial structure, which has been extensively remodeled in the past. Due to the location of the 100-year floodplain on the north and east sides of the residence and the location of the shoreline on the west side of the residence, there is no location on the property where a new residence could be constructed in a conforming location. In addition, the petitioner is not proposing any exterior expansion of the structure; therefore, there is no further encroachment into the floodplain setback area. Therefore, the approval of this request would be within the purpose and intent of the Ordinance.

**OTHER ITEMS REQUIRING BOARD ACTION:**

**BA05:065 TERRY & ELIZABETH DOW**

Mr. Bartholomew

*I make a motion to reconsider the decision made by the Board.*

The motion was seconded by Mr. Dwyer and carried unanimously.

Mr. Dwyer

*I make a motion to approve the request in accordance with the Staff recommendation, as stated in the Staff Memorandum, and with the conditions recommended in the Staff Memorandum.*

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was that Conditions No. 4, 5, and 6 be changed to read as follows:

**Revised Condition No. 4**

Prior to approval of the Certified Survey Map, it must be verified by a registered Land Surveyor or Professional Engineer that the existing natural ground elevation of the proposed building envelope is at least 2.0 ft. above the 100-year flood elevation of 869 ft. above mean sea level.

**Revised Condition No. 5**

The lowest level of the proposed residence must be at or above 100-year flood elevation of 869 ft. above mean sea level. Wherever possible, without interfering with a garage in the exposed lower level of the proposed residence or with an exterior stairway on the west side of the proposed residence, the finished grades adjacent to the new residence must be at least three (3) ft. above the 100-year flood elevation (at least 872 ft. above mean sea level).

**Revised Condition No. 6**

Filling or grading in conjunction with the construction of a residence on the vacant parcel shall not be permitted beyond 30 ft. from the residence, except as required for driveway construction or for the installation of a septic system.

It should be noted that an exterior stairway on the west side of the proposed residence, as shown on the proposed Grading Plan attached as Exhibit "C", extends slightly outside of the building envelope. The Planning and Zoning Division staff has no objection to this, provided the proposed residence and all decks and/or balconies are located within the approved building envelope. Therefore, the Planning and Zoning Division staff also recommends the following additional conditions:

**Recommended Condition No. 8**

The proposed new residence, including all decks and/or balconies, must be located within the approved building envelope. An exterior stairway may extend outside of the approved building envelope, provided it does not exceed four (4) ft. in width.

**Recommended Condition No. 9**

A note must be placed on the Certified Survey Map referencing the file number (BA05:065) and the date of this decision and indicating that a floodplain setback variance was granted for the building envelope on the vacant parcel, subject to conditions on file in the Waukesha County Department of Parks and Land Use.

The reasons for the recommendation, as stated in the Staff Memorandum, are as follows:

The approval of a floodplain setback variance, with the recommended modifications to the previous conditions of approval, is substantially in conformance with the previous decision. The original Condition No. 4 was intended to limit the amount of fill that would be required. Although it has since been determined that the existing natural ground elevation in portions of the proposed building envelope is six (6) inches lower than previously believed, the recommended change to Condition No. 5 will allow the residence to be set at a lower elevation than would be required if the driveway to the garage in the exposed lower level were required to be three (3) ft. above the 100-year flood elevation. This will reduce the overall amount of fill required around the new residence. The previous Condition No. 6, which provided that no fill may be placed outside of the designated building envelope, was unduly restrictive and would have made compliance with Condition No. 5 extremely difficult. The recommended change to Condition No. 6 will limit filling and grading to the area within 30 ft. of the new residence, which is actually more restrictive than the original Condition No. 6. Therefore, the approval of a floodplain setback variance, with the recommended modifications to the previous conditions of approval, is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

**ADJOURNMENT:**

Mr. Dwyer

*I make a motion to adjourn this meeting at 8:40 p.m.*

The motion was seconded by Mr. Tarmann and carried unanimously.

Respectfully submitted,

Peggy Pelikan  
Secretary, Board of Adjustment

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